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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's
Rules To Provide Exclusivity To
Qualified Private Paging Systems
At 929-930 MHz

PR Docket No. 93-35
RM-7986

To: The Commission

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PETITION FOR CLARIFICATION AND RECONSIDERATION
OF
PAGING NETWORK, INC.

Paging Network, Inc., pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, respectfully petitions the Commission for clarification and reconsideration of certain aspects of the Commission's Report and Order, 58 Fed. Reg. 62289 (Nov. 26, 1993, "Exclusivity Order"), in the above-captioned proceeding. PageNet believes adoption of the few points it raises will further the Commission's objectives as set forth in the Exclusivity Order.

I. INTRODUCTION AND SUMMARY

PageNet is the largest and fastest growing paging carrier in the nation, providing both common carrier and private carrier paging ("PCP") services to over 3 million subscribers. Much of PageNet's recent growth has occurred on the PCP frequencies the Commission has earmarked for earned exclusivity.

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PageNet fully supports the Commission's decision to move from shared to exclusive use of the subject frequencies. This move avoids the quagmire of congestion and confusion which exists below 900 MHz, and assures the industry that potential investment in the subject frequencies will be protected from a similar fate. PageNet believes earned exclusivity is a concept which assures financial investment, and rapid and expansive service to the public, maximizing public welfare.

Nonetheless, PageNet believes that certain administrative clarifications and/or modifications of the implementation rules, are necessary to assure the Commission's objectives are met and that licensees are certain of their obligations under earned exclusivity. This petition briefly addresses those clarifications and/or modifications. To wit, the Commission should:

1. clarify that licensees have eight (8) months from the date on which the Commission announces they qualify for earned exclusivity to operate their earned exclusivity systems;
2. adopt a transition period for incumbents who build out and operate their systems to move from multi-frequency transmitters to single frequency transmitter operation, so long as they have built out their systems within the eight (8) months earned exclusivity window;
3. adopt statewide licensing of regional systems, as proposed by the Association for Private Carrier

Paging Section of the National Association of Business and Educational Radio, Inc. in its Reconsideration Petition filed this date ("APCP Petition");

4. revise the power limitations for regional systems, as set forth in the APCP Petition;
5. clarify, consistent with the Exclusivity Order's intent, those rules which govern forfeiture of exclusivity rights for failure to construct.

II. DISCUSSION

A. **The Commission Should Clarify That Incumbent Licensees Have Eight (8) Months from the FCC's Determination of Earned Exclusivity to Meet Their Obligations to Operate a Qualified System, and Allow Incumbents the Opportunity to Transition From a Multi-Frequency to Single Frequency Transmitter Environment**

Both the Notice of Proposed Rulemaking and Order in this proceeding assume the need for incumbent licensees to earn exclusivity over some modest period of time, but do not expressly state the date on which incumbent licensees who qualify for an opportunity to earn exclusivity, based on applications filed with, or granted by the Commission on October 14, 1993, must satisfy their earned exclusivity requirements.

PageNet believes the Commission intended this date to be eight months from the date the Commission determined a licensee is eligible for earned exclusivity, based on its reading of Section 90.495(c) of the rules. That rule provides that applicants will be "granted exclusivity under this section at the time of original

licensing," and that such exclusivity will expire unless the system "is constructed and operating within 8 months of the licensing date." Id. PageNet believes the use of the term "licensing date" refers to the action the Commission takes to award exclusivity. In the context of new applicants, that date may coincide with the issuance of actual transmitter licenses. In the context of incumbents, however, it is the issuance of a certification of qualification, but not a transmitter license, per se. The Order does not set forth any reason for distinguishing between the two types of licensees in this context, nor does PageNet believe such a reason exists.

The eight months from the date the Commission grants earned exclusivity, is sufficient for incumbents to earn exclusivity, and have built and in operation local, regional and/or nationwide systems offering those services to the public. Any shorter timeframe, though, would be unrealistic. Incumbent applicants will be required to modify existing sites and otherwise take actions to maximize their systems quality and coverage, simultaneously seeking to meet their earned exclusivity obligations. They need to do this in a timely, yet orderly fashion which allows for precise engineering and construction, and thus truly quality systems rather than makeshift systems which require administratively and operationally expensive modifications after receiving an award of exclusivity.

Thus, as with new licensees, the Commission should clarify that incumbent licensees who qualify for earned exclusivity based on applications received or granted by the

Commission prior to October 14, 1993, will have eight months from the Commission's determination that they qualify for earned exclusivity to actually meet their exclusivity obligations.

Notwithstanding the eight month requirement, the Commission's adoption of a single transmitter requirement has also caused need for consideration of a transition period for incumbent licensees to transition from multi-frequency transmitter operation to single frequency transmitter operation. Those carriers who have constructed or filed for multi-frequency transmitter networks, or otherwise taken actions based on reliance on same, will need time in which to transition to the new environment. In the absence of some reasonable, yet limited period of time to transition, these carriers would be scrambling for sites, equipment and the sheer manpower necessary to make the conversion, in each instance driving up the costs and complexity of the tasks at hand, and ultimately, potentially, affecting the prices that consumers pay for their services.

A more rational approach would be to adopt a two year window, beginning on the date the Commission determines a license qualifies for earned exclusivity, in order to operate on a single transmitter basis. This approach furthers the objectives of the Commission, the public and the industry. Coupled with the eight month construction requirement for earned exclusivity it assures that all qualifying systems are operational, meeting the Commission's objective of providing timely service to the public. Yet it assures licensees the opportunity, where needed, to systematically obtain and install new sites to meet the single

transmitter requirement without causing undue economic expense or taxing the manpower, and ultimately the quality of exclusive systems.

B. The Commission Should Modify Its Regional Exclusivity Implementation Rule

The Commission has appropriately recognized that "wider area systems are generally more beneficial to paging customers and more responsive to the rising demand for paging services," Exclusivity Order at ¶33, and presumably determined that nationwide and regional licensing opportunities were necessary on that basis. However, using the contours of qualified local systems to determine the geographic area for regional protection has, PageNet believes inadvertently, resulted in regional systems approximating little more than more wide area local systems, not the truly regional systems the Commission intended. The APCP Petition, filed this date, offers an administratively simple means for achieving truly regional systems, through the use of statewide boundaries rather than local systems. PageNet wholeheartedly supports that approach.

PageNet also wholeheartedly supports an increase in maximum power for regional systems to 3500 watts. This will permit more economic efficiency in the build out of these systems, and thus foster the provision of reasonably priced communications services required by Section 1(a) of the Communications Act, 45 U.S. C. §151.

C. The Commission Should Clarify Section 90.495(c) (2)'s Use of the Phrase "Previously Proposed Service Area."

The Commission's rules include penalties for failure to construct a qualified system within the appropriate time frames. One penalty set forth in 90.495(c)(2) is that the licensee may not apply for "any new station authorization in the previously proposed service area for one year from the expiration of exclusivity." PageNet believes this phrase needs to be clarified to assure that the prohibition extends only to applications for transmitter sites on 1) the frequency for which the applicant applied for exclusivity and 2) within the contours of the sites not built.

It is axiomatic that the prohibition should not extend to additional frequencies, and nothing in the text of the Notice of Proposed Rulemaking or Exclusivity Order suggests anything to the contrary. In fact, if the rule were otherwise, it would preclude a licensee from maintaining, modifying or expanding operating systems providing quality service to the public in similar areas on any PCP frequency. Taken to its extreme, a licensee who applied for but did not construct a qualifying nationwide system would be precluded from filing applications on any PCP frequency. Clearly, the Commission did not intend such a result nor does such a result have any public policy benefits.

More appropriately, the term "proposed service area" should be defined to mean the area contained within the contours of the transmitters the licensee failed to build, on the frequency the licensee proposed. This penalty, coupled with the loss of

exclusivity, and the concomitant secondary status, is more than sufficient to provide the appropriate incentives to achieve exclusivity, and doesn't preclude a licensee from offering consumers the expanded service they deserve in areas other than the initial, failed proposed coverage area.

III. CONCLUSION

PageNet applauds the Commission's earned Exclusivity Order, but believes that the above-captioned clarifications and/or modifications are necessary in order to achieve the full benefit of the Commission's decision to allow earned exclusivity. PageNet therefore respectfully requests that the above clarifications/modifications be expeditiously granted.

Respectfully submitted,

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Date: December 27, 1993

CERTIFICATE OF SERVICE

I, Terri C. Valeda, hereby certify that a copy of the foregoing "Petition For Clarification and Reconsideration of Paging Network, Inc.," was served by hand, this 27th day of December, 1993 to the following:

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Terri C. Valeda

*Served first class postage pre-paid this 27th day of December, 1993.